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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

PAUL BAKKERS, Plaintiff and Respondent, v. MICHAEL BAKKERS, Defendant and Appellant.	G054865 (Super. Ct. No. 30-2015-00768210) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Frederick P. Aguirre, Judge. Affirmed.

Michael Bakkers, in pro. per., for Defendant and Appellant.

Law Offices of John A. Belcher and John A. Belcher for Plaintiff and Respondent.

Michael Bakkers[1] appeals from a judgment after the trial court ruled in favor of his father, Paul Bakkers, on his complaint for cancellation of interest and quiet title. Michael argues the trial court erred because its factual findings are inconsistent with its legal conclusions and it failed to make crucial findings. As we explain below, the record does not include a reporter's transcript, and reversible error does not appear on the face of the record. The judgment is affirmed.

FACTS

I. Substantive Facts

Paul and Joan Bakkers (the Bakkers), who were both in their 90s at the time of the dispute, were married for over 70 years. Their marriage produced six children, including Michael, Inge J.P. Cornelius, who was deceased, Marjorie J.P. Waclawick, Gaby Bakkers, Andrew Bakkers, and Joyce Leidelmeyer. For 37 years, Paul and Joan's primary residence was located at 244 Juanita Way, Placentia, CA 92870 (Juanita Property). Gaby lived across the street. Paul and Joan invested in real estate.

In June 1993, Michael filed a fictitious business name statement for the Southwest Credit Company (Southwest) with offices at the Juanita Property. A few months later, Southwest was incorporated. Michael is Southwest's president and owns a 50 percent interest, while Andrew and Paul each own a 25 percent interest.

In February 2009, Paul and Joan signed the Bakkers Living Trust (Trust) establishing themselves as co-settlors and co-trustees. The Juanita Property was included in the Trust's schedule of assets.

In March 2012, Paul and Joan purchased an investment property at 1907 Whitman Drive, Placentia, CA 92870 (Whitman Property). Andrew owned the Whitman Property, which was going into foreclosure. Michael was the realtor, and Michael's

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[1] Because the parties share the same last name, for convenience we refer to the parties by their first names, except when referring to Paul and Joan collectively as the Bakkers.

girlfriend, Linh Nguyen was Paul and Joan's agent. Andrew transferred the Whitman Property to Nguyen, and Nguyen transferred the Whitman Property to Paul and Joan.

In January 2013, the Bakkers executed a grant deed naming Michael as a joint tenant of the Juanita Property. A notary witnessed the execution of the grant deed.

In September 2013, Paul and Joan executed a first amendment to the Trust, which intentionally omitted Inge and Marjorie as beneficiaries, and named Michael as the successor trustee and Andrew as the successor trustee to Michael. The first amendment also provided that upon their deaths the remainder of the trust estate would be distributed 25 percent each to Joyce, Gaby, Andrew, and Michael.

II. Procedural History

During the summer of 2014, Paul and Joan came to believe Michael was stealing from them, and six months later they filed the original complaint and later a first amended complaint.

Paul filed a second amended complaint (SAC) against Michael, Southwest, and Nguyen alleging the following causes of action: financial elder abuse (first); intentional misrepresentation (second) against Michael and Nguyen; constructive fraud (third) against Michael and Nguyen; intentional infliction of emotional distress (fourth) against Michael and Nguyen; cancellation of instrument (fifth) against Michael; quiet title (sixth) against Michael; breach of written contract (seventh) against Nguyen; and breach of oral contract (eighth) against Michael. The trial court later granted the Bakkers' motion to bifurcate the equitable causes of action, the fifth and sixth causes of action, from the remaining causes of action.

As relevant here, the SAC alleged that in July 2014 the Bakkers discovered Michael had gained access to their finances and stole from them for at least 10 years. The SAC also claimed that between 2001 and 2009 Michael caused the Bakkers to suffer financial losses of at least $1 million and he reneged on his promises to repay them. As to the Juanita Property, their longtime primary residence, the SAC alleged that in January

2013, Michael either fraudulently, with undue influence, or with force obtained a grant deed from the Bakkers naming himself as a joint tenant. The SAC added that unbeknownst to them, Michael procured a loan that resulted in a $700,000 lien on the Juanita Property. The SAC asserted the grant deed on the Juanita Property caused them a reasonable apprehension of serious injury. With respect to the Whitman Property, the SAC alleged Michael had Joan withdraw $375,000 in cash from her savings account to pay for the Whitman Property in full. The SAC stated that before Nguyen transferred the Juanita Property to the Bakkers, she and Michael obtained a $375,000 mortgage on the Juanita Property using Southwest. The SAC said the Bakkers learned about the mortgage over two years later when they tried to sell the Juanita Property.

Joan passed away before the matter went to trial. At a bench trial on the Bakkers' fifth and sixth causes of action before Judge Frederick P. Aguirre, the trial court heard testimony from about nine witnesses (but not Paul who suffered from memory loss and dementia), watched a DVD video of Paul and Joan, and admitted numerous exhibits into evidence. After the Bakkers rested, the trial court granted Nguyen's motion for judgment (Code Civ. Proc., § 631.8) on the fifth and sixth causes of action. The trial court took the matter under submission.

The trial court issued a lengthy minute order with its statement of decision. The court detailed the Bakkers' family history and some of their real estate investments. The court stated the evidence established it was the Bakkers' intent to provide a home for each of their children. Contrary to Michael's claim otherwise, the court concluded there was insufficient evidence the Bakkers intended to remove the Juanita Property from the Trust's assets. The court relied in part on the Bakkers' videotaped conversation with Michael where Paul stated the Juanita Property was Michael's in exchange for Michael caring for Paul and Joan as long as they lived. The court noted that during geriatric evaluations, both Paul and Joan stated they did not trust Michael, but neither expressed an intent to disinherit him. The court explained that Michael lived with his parents at the

Juanita Property for a year and a half before Paul and Joan moved out of the Juanita Property and into Gaby's home across the street. The court added there was evidence Gaby kept Andrew and Joyce from seeing their parents. The court noted Joan sought a restraining order against Michael and at the hearing Joan testified she was afraid of Michael because he took her home and a lot of money; when Paul and Joan moved out they took their valuables.[2] The court noted that after the Bakkers moved in with Gaby, the Bakkers amended the Trust to disinherit Michael.

As to the Juanita Property grant deed, the trial court noted Michael did not give valuable consideration to the Bakkers. The court concluded Paul and Joan *voluntarily* signed the grant deed and it was not a product of threats, coercion, or fraud. The court relied in part on the notary's testimony that she described the document to the Bakkers and they appeared to understand it. The court noted Michael's concern his siblings might borrow money against the Juanita Property, which was why he recorded the deed of trust, but he "took that information one step too far." Relying on "Michael['s] testi[mony] that he understood that his parents intended that he inherit [the Juanita Property] upon their death[,]" the court opined Michael should have left the Juanita Property in the Trust with a specific bequest to him upon their deaths. The court concluded that if the grant deed was left outstanding it may cause serious injury to Paul. The court cancelled the grant deed on the Juanita Property and restored title to the Trust.

With respect to the $700,000 deed of trust on the Juanita Property, the trial court explained Michael testified Southwest did not loan him $700,000 to be secured by a deed of trust against the Juanita Property. The court added Michael said he recorded the deed of trust to prevent his siblings from encumbering the Juanita Property. The court concluded the deed of trust may cause serious injury to Paul and ordered it cancelled.

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[2] The trial court denied the request for a restraining order because of a lack of evidence of harm.

With respect to the Whitman Property, the trial court detailed the reasons Andrew sold the Whitman Property to Nguyen. The court explained Michael took Joan to the bank where she withdrew $375,000 from a savings account she "owned and controlled" and he gave the money to Nguyen who purchased the Whitman Property. The court stated that after the grant deed granting the Whitman Property to Nguyen was recorded, Nguyen signed a promissory note for $375,000 to be secured by a deed of trust against the Whitman Property. The court said Nguyen then transferred the Whitman Property to Joan. The court noted Michael received a commission of $21,600. The court opined the issue of the validity of the Whitman Property grant deed was moot because Joan passed away and title to the asset passed over to the Trust. The court explained the $375,000 deed of trust with assignment of rents incorrectly stated that money was owed to Southwest. The court continued that any money belonged to Joan. The court concluded the $375,000 deed of trust may cause injury to Paul if it was left outstanding and ordered it cancelled. In rejecting the Bakkers's request to impose a fine or penalties, the court concluded Michael did not cause the Bakkers to lose their primary residence, the $700,000 deed of trust was "'fictional,'" and Michael did not act in bad faith, with undue influence, or with intent to defraud. The court added Michael did not profit, other than the sales commission, and he intended to protect his parents' home.

Michael, Nguyen, and Southwest objected to the statement of decision, arguing it failed to resolve a controverted issue by either omitting material evidence or because of inconsistency. Specifically, they asserted the court's "factual findings" were either insufficient to support or inconsistent with the court's legal conclusions regarding the Juanita Property and the Whitman Property. The trial court did not rule on this objection.

After the trial court granted the Bakkers's request to dismiss all the remaining causes of action, the court entered judgment for the Bakkers against Michael, Nguyen, and Southwest. The court's judgment did the following: cancelled the joint

tenancy in the Juanita Property and restored title to the Trust; cancelled the $700,000 deed of trust against the Juanita Property; and cancelled the $375,000 deed of trust against the Whitman Property. The court entered three orders executing its judgment. The Bakkers gave notice of entry of judgment.

Michael filed a motion to move to set aside and vacate the judgment because the court made an erroneous legal decision not supported by the facts. Michael noted the court did not act on the previous objection. Nguyen filed a motion to move to set aside and vacate the judgment because the court previously granted her motion for a directed verdict.

Judge Aguirre retired without acting on Michael's objection to the minute order containing its statement of decision or his motion to vacate. The matter was transferred to Judge Derek W. Hunt. Judge Hunt declined to vacate a judgment made by another judge, but the court amended the judgment to reflect it did not apply to Nguyen. Michael appealed.

While Michael's appeal was pending, he filed a petition for writ of supersedeas regarding enforcement of the judgment. This court denied the petition without prejudice. (*Bakkers v. Bakkers* (June 8, 2017, G054865) [nonpub. order].) After briefing was complete and Michael requested oral argument, Paul passed away. We stayed the appeal for 60 days to allow respondent's counsel to file a party substitution motion. We granted respondent's counsel two extensions of time to file that motion.

Respondent's counsel filed a motion to substitute Gaby as respondent in place of Paul. Michael opposed that motion. We denied respondent's counsel's motion to substitute Gaby because the motion failed to comply with the requirements of Code of Civil Procedure section 377.32. (*Bakkers v. Bakkers* (July 17, 2018, G054865) [nonpub. order].) In the same order, we gave respondent's counsel another 60 days to file a party substitution motion and advised counsel of the consequences if he failed to do so. When that time expired without respondent's counsel filing a party substitution motion, we

lifted the stay and directed the clerk to place the matter on the next available oral argument calendar. (*Bakkers v. Bakkers* (Sept. 19, 2018, G054865) [nonpub. order].)

On October 5, 2018, respondent's counsel filed a motion for permission to lodge exhibits. The exhibits consist of court records from September 2018 regarding respondent counsel's unsuccessful attempt to obtain a superior court order appointing a neutral third party as a special administrator to prosecute this appeal. We treated counsel's motion as a request for judicial notice and advised counsel we will decide the request in conjunction with the appeal. (*Bakkers v. Bakkers* (Nov. 8, 2018, G054865) [nonpub. order].)

On December 12, 2018, respondent's counsel filed a request for judicial notice of the probate court's order appointing Robert M. Newell, Jr., as special administrator "limited to the pending appeal litigation for purposes of standing." The court added, "These Special Letters do not extend beyond the powers needed to represent the estate in the pending appeal." The letters expire at the conclusion of the appeal.

On December 14, 2018, Michael filed an objection to respondent counsel's request for judicial notice. Additionally, Michael requests we reverse the probate court's order appointing Newell as special administrator. The same day, respondent's counsel filed a motion to substitute Newell as party for Paul.

DISCUSSION

I. Standard of Review, Statement of Decision & Implied Findings

Here, Michael has elected to proceed on a clerk's transcript, and the appellate record does not include a reporter's transcript. This is referred to as a judgment roll appeal. (Code Civ. Proc., § 670, subd. (b); *Navarro v. Perron* (2004) 122 Cal.App.4th 797, 801.)

"'A judgment or order of the lower court is *presumed correct* . . . and error must be affirmatively shown.'" (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) "An appellant must provide an argument and legal authority to support his contentions.

This burden requires more than a mere assertion that the judgment is wrong." (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852.) It is appellant's burden to provide an adequate record and show error on appeal. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-1141.) These rules apply when a person is self-represented. (*Leslie v. Board of Medical Quality Assurance* (1991) 234 Cal.App.3d 117, 121.)

For an appeal on the judgment roll, we conclusively presume sufficient evidence was presented to support the trial court's findings. (*Ehrler v. Ehrler* (1981) 126 Cal.App.3d 147, 154 (*Ehrler*).) Our review is limited to determining whether any error appears on the face of the record. (Cal. Rules of Court, rule 8.163.) On a judgment roll appeal, the only cognizable issues are whether the complaint states a cause of action, whether the findings are within the issues, whether the judgment is supported by the findings, and whether reversible error appears on the face of the record. (*Estate of Larson* (1949) 92 Cal.App.2d 267, 268; *National Secretarial Service, Inc. v. Froehlich* (1989) 210 Cal.App.3d 510, 522.)

Michael's reliance on *Whittington v. McKinney* (1991) 234 Cal.App.3d 123, 127, is misplaced. In that case, the court did not say, as Michael contends, an adequate statement of decision makes a reporter's transcript unnecessary. In addressing whether the trial court erred by failing to issue a statement of decision, the *Whittington* court opined that when there is a lengthy case, it is impossible to work with a reporter's transcript as a statement of decision. (*Id*. at p. 127.) The court added it was unfair to the litigant to require him to purchase the reporter's transcript to determine in the first instance whether there is a reasonable basis for appeal. (*Ibid*.) Michael's interpretation of *Whittington* is mistaken.

Michael also complains the trial court did not rule on his objections to the statement of decision. When a party brings omissions or ambiguities in the statement of decision to the trial court's attention, an appellate court will not imply findings in favor of the prevailing party. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133.) But

Michael admits he is not challenging the sufficiency of the evidence.[3] This is fortuitous because without the reporter's transcript, we are unable to determine whether substantial evidence supports any implied findings. We do not invoke the implied findings doctrine to resolve this appeal. Instead, we limit our review to whether there are any errors on the face of the record.

II. No Errors Appear on the Face of the Record

Michael raises two fundamental issues. First, he argues the trial court's factual findings are inconsistent with its legal conclusions. Second, he contends the court's statement of decision fails to address several key issues. We will address his contentions, to the extent we can on the limited record before us.

A. Juanita Property

Relying on the trial court's conclusions the Bakkers voluntarily signed the grant deed for the Juanita Property and Michael did not act in bad faith, with undue influence, or with the intent to defraud, Michael argues the court's conclusion was inconsistent with its factual findings. He maintains the factual findings do not satisfy Civil Code section 3412 (section 3412). We disagree.

Section 3412 states, "A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled." "To prevail on a claim to cancel an instrument, a plaintiff must prove (1) the instrument is void or voidable due to, for example, fraud, and (2) there is a reasonable apprehension of serious injury including pecuniary loss or the prejudicial alteration of one's position. [Citation.]" (*U.S. Bank National Assn. v. Naifeh* (2016) 1 Cal.App.5th 767, 778.) An instrument, such as a deed of trust, that has

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[3] Michael states he "agrees with the [factual] findings" but he "object[s] to the trial court[']s [legal] conclusions."

been created without a meeting of the minds cannot be enforced as a contract. (*Patterson v. Clifford F. Reid, Inc.* (1933) 132 Cal.App. 454, 456-457.)

Here, although the trial court concluded the Bakkers voluntarily signed the grant deed for the Juanita Property and Michael did not act in bad faith, with undue influence, or with the intent to defraud, the court concluded Michael admitted his parents intended he inherit the Juanita Property upon their death. The court's factual finding Michael did not act with ill motives was not inconsistent with its legal conclusion the grant deed was voidable pursuant to section 3412 because the grant deed did not represent the parties' intent. Although the court concluded Michael's conduct did not cause the Bakkers to lose their home, the court noted Michael gave no consideration for the interest and the naming of Michael as a joint tenant was a prejudicial alteration of the Bakkers' position. (*Hamilton v. Ferguson* (1938) 26 Cal.App.2d 390, 402 [lack of consideration justified cancellation of lease and title quieted].) Finally, unlike the case of *Bretthauer v. Foley* (1910) 15 Cal.App. 19, 28, a case upon which Michael relies, the Bakkers did not change their minds as evidenced by Michael's admission concerning his parents' intent.

B. $700,000 Deed of Trust

As we explain above, section 3412 requires the instrument be void or voidable and evidence there is a reasonable apprehension of serious injury. Michael does not dispute the $700,000 deed of trust was voidable. However, he asserts the trial court did not make any factual findings to support its legal conclusion the $700,000 deed of trust may cause serious injury to Paul if left outstanding. To the contrary, the court concluded Michael recorded the deed of trust to prevent his siblings from encumbering the Juanita Property. It is clear the Bakkers intended to give each of their children a home. Michael recorded the deed of trust to control the Juanita Property and by doing so altered the Bakkers' position causing a reasonable apprehension of injury. In light of our

limited standard of review, we must presume there was evidence to support the court's conclusion the $700,000 deed of trust may cause serious injury to Paul if left outstanding.

C. Whitman Property $375,000 Deed of Trust with Assignment of Rents

Michael disputes both the $375,000 deed of trust with assignment of rents was void or voidable and that Paul suffered a reasonable apprehension of injury. He is incorrect.

With respect to whether it was void or voidable, Michael claims the trial court erred by concluding Joan withdrew money from a savings account she controlled and the money was deposited in that account from an unknown source the day before it was withdrawn. Michael asserts Joan withdrew the money from a joint checking account both she and Paul controlled and Paul may have approved the withdrawal. These are factual issues we cannot address on a judgment roll appeal. (*Ehrler*, *supra*, 126 Cal.App.3d at p. 154.) Additionally, Michael relies on exhibits that he did not transmit to this court. (Cal. Rules of Court, rule 8.224(a)(1) & (a)(3).) As to whether Paul would suffer a reasonable apprehension of injury, the court explained the $375,000 deed of trust with assignment of rents erroneously stated the $375,000 was owed to Southwest when in fact it was owed to Joan, and upon her death, to Paul. Payment of any rents to Southwest would create a reasonable apprehension of injury to Paul. In light of the above standards, we must presume the court concluded the $375,000 deed of trust was voidable and it may cause serious injury to Paul if left outstanding.

On the face of this record, no error has been established. Accordingly, we affirm the trial court's judgment.

III. Requests for Judicial Notice & Motion to Substitute Party

First, respondent's counsel filed a motion for permission to lodge court records concerning counsel's unsuccessful attempt to obtain a probate court order appointing a third party as a special administrator to prosecute this appeal. We treated counsel's motion as a request for judicial notice. We deny the request for judicial notice

because counsel's unsuccessful attempt to appoint a special administrator is not relevant to this appeal and counsel subsequently was successful in obtaining such an order.

Second, respondent's counsel filed a request for judicial notice of the probate court's order appointing Newell as special administrator. Michael objected and requested we reverse the court's order appointing Newell as special administrator. We grant respondent counsel's request to take judicial notice of the probate court's records. (Evid. Code, §§ 452, subd. (d), 459.) Additionally, we grant respondent's counsel motion to substitute Newell as party for Paul. (Code Civ. Proc., § 377.31; *Bullock v. Philip Morris USA, Inc.* (2008) 159 Cal.App.4th 655, 667, fn. 1; Cal. Rules of Court, rule 8.36(a).) Finally, we deny Michael's request to reverse the probate court's order appointing Newell as special administrator because Michael did not appeal from that order, and it is not an appealable order. (Prob. Code, § 1303, subd. (a); *Estate of Hughes* (1978) 77 Cal.App.3d 899, 901 [former Probate Code, § 461].)

DISPOSITION

The judgment is affirmed. Respondent shall recover his costs on appeal.

O'LEARY, P. J.

WE CONCUR:

THOMPSON, J.

GOETHALS, J.